IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5527 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DILIPBHAI KHUSHALBHAI BHANGI

Versus

PRINCIPAL/MANAGER

Appearance:

1. Special Civil Application No. 5527 of 2002
MR BN PATEL for Petitioner No. 1
NOTICE SERVED BY DS for Respondent No. 1
MR RV DESAI, AGP for Respondent No. 2-4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 25/10/2002

ORAL JUDGEMENT

Rule. In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. The petitioner's father expired on 20.10.1997

while in government service. The petitioner, therefore, made an application for compassionate appointment. The application has been rejected on the ground that on the date of death of the deceased, the elder son was serving as a police constable and was residing with the deceased. Hence, the income of the family had exceeded the stipulated income limit of Rs.2,500/- per month.

3. Earlier the petitioner had filed Special Civil Application No. 4110 of 2001 in which this Court by order dated 21.12.2001 directed the petitioner to make a representation and reconsider the matter.

Again by the impugned order dated 13.5.2002, the respondent authorities have rejected the representation on the same ground.

4. Mr BN Patel, learned counsel for the petitioner submits that the petitioner had already produced the certificate dated 7.1.1999 issued by the Reserve Police Sub-Inspector, Police Headquarters, Mehsana (Annexure "B" - pg. 19) certifying that the petitioner's elder brother, Kanubhai Khushalbhai, was rendering services as an armed police constable, Mehsana Headquarters for the last two years and was residing at Mehsana for the last two years. It clearly shows that the petitioner's elder brother was residing at Mehsana since January 1997 prior to the death of the petitioner's father on 20.10.1997. The elder brother was already married earlier and was residing separately and merely because the elder brother's name appeared in the ration card in October, 1997, it cannot be treated as conclusive evidence that the petitioner's elder brother was residing with the father. In many cases, family members' names in the ration card are not changed or altered for a fairly long period and, therefore, in the case of the petitioner's elder brother also, it was only when he applied for compassionate appointment in April, 1998 that change was required to be made. That, however, does not necessarily prove that the petitioner's elder brother was not residing with the father at the time of his death.

5. On the other hand, Mr RV Desai, learned AGP has submitted that since the name of the petitioner's elder brother's name continued in the ration card till April, 1998, no fault can be found with the impugned decision of the respondent authorities.

6. Having heard the learned counsel for the parties, it appears to the Court that the contention urged by Mr BN Patel for the petitioner on the basis of the

certificate dated 7.1.1999 does merit serious consideration. The respondent authorities have not even dealt with the said contention in the impugned order dated 13.5.2002. In case the respondent authorities were not satisfied with the said certificate dated 7.1.1999, they could have made, or caused to be made, appropriate inquiry from the District Superintendent of Police, Mehsana or the SRP Commandant under whom the petitioner's elder brother Kanubhai Khushalbhai was serving at the relevant time. Hence, the matter is required to be remanded to the respondent authorities for making inquiry in this behalf.

7. At this stage, Mr BN Patel for the petitioner points out that by Government Resolution dated 10.3.2000 read with Government Resolution dated 7.9.2002, the State Government has done away with the income limit of Rs.2,500/- per month with effect from 1.1.1996 and, therefore, since the petitioner's father expired on 20.10.1997, the respondents are not required to consider the income limit while deciding the application for compassionate appointment.

It appears to the Court that this aspect will also be required to be considered by the authorities.

8. In view of the above, the impugned order dated 13.5.2002 is quashed and set aside and respondent Nos. 3 and 4 are directed to reconsider the petitioner's application for compassionate appointment in accordance with law and the observations made in this judgment.

The petition stands disposed of accordingly. Rule is made absolute to the aforesaid extent.

Direct Service is permitted.

(M.S. Shah, J.)

sundar/-